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CHRISTOPHER WINN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHRISTOPHER WINN, an individual,

Plaintiff,

v.

PHILIP FUSCO, an individual;
FRANKLIN R. PECK, an individual;
PSG CAPITAL PARTNERS, INC., a
California Corporation; AMERICAN
MONEY GROUP; and DOES 1
through 10, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES

- 1. Securities Fraud – Violation of California Corporations Code § 25401**
- 2. Breach of Fiduciary Duty**
- 3. Fraud in Violation of Section 10(b) and Rule 10b-5 Thereunder**
- 4. Fraud in Violation of Section 17(a) of Securities Act**
- 5. Conversion**
- 6. Unfair Business Practices (California Business & Professions Code §§ 17200 et seq.)**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff CHRISTOPHER WINN (“Plaintiff”) and alleges the following claims for relief against Defendants PHILIP FUSCO (“Fusco”);

1 FRANKLIN R. PECK (“Peck”); PSG CAPITAL PARTNERS, INC., a
2 California Corporation (“PSG”); AMERICAN MONEY GROUP, a California
3 Corporation (“AMG”); and DOES 1 through 10, inclusive; and hereby demands a
4 jury trial; and seeks monetary compensation.

5 **NATURE OF THE CASE**

6 This is a securities fraud case in which Defendants placed Plaintiff, an
7 unqualified investor, into three separate investments without providing him with
8 an Offering Circular or Private Placement Memorandum beforehand. As a result
9 of those actions, Plaintiff suffered a financial loss.

10 **JURISDICTION AND VENUE**

11 1. This Court has jurisdiction under Section 10(b) of the Exchange Act
12 [15 U.S.C. § 78j(b)] and Rule 17 C.F.R. § 240.10b-5 et al, and it has pendent
13 jurisdiction over the state law claims set forth herein below.

14 2. Venue is proper in this Court because the complained-of acts
15 occurred within the Central District of California, and at least one Defendant
16 resides within the Central District of California.

17 **PARTIES**

18 3. Plaintiff is an individual who, at all relevant times in question,
19 resided in the State of Hawaii.

20 4. Defendant PSG is a corporation organized and existing under the
21 laws of California.

22 5. Defendant AMG is a corporation organized and existing under the
23 laws of California.

24 6. Defendant Fusco is an individual who at all relevant times resided in
25 the State of California.

26 7. Plaintiff is informed and believes, and thereon alleges, that Defendant
27 Fusco is a founder and principal shareholder of Defendant PSG.

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1 8. Defendant Peck is an individual who at all relevant times resided in
2 the State of California.

3 9. Plaintiff is informed and believes, and thereon alleges, that Defendant
4 Peck is a founder and principal shareholder of Defendant AMG.

5 10. On information and belief, Plaintiff alleges that, at all relevant times
6 herein, Defendant PSG was acting as and was, in fact, Defendant AMG's agent.
7 (AMG finds opportunities for PSG's investors and then puts them into those
8 investments.)

9 11. Defendant AMG was acting as Plaintiff's financial advisor and owed
10 Plaintiff a fiduciary duty to act in his best interest in placing him in investments.

11 12. The true names or capacities, whether individual, corporate,
12 associate, or otherwise, of defendants named herein fictitiously as DOES 1
13 through 10, inclusive, are unknown to Plaintiff. Plaintiff is informed and believes,
14 and thereon alleges that each of the fictitiously named defendants is in some way
15 liable to Plaintiff, and he therefore sues said defendants by such fictitious names.
16 Specifically, but without limitation, said fictitious defendants include
17 corporations, partnerships, and individuals acting as financial advisors or
18 investment advisors or agents to financial advisors or investment advisors.
19 Plaintiff will amend this Complaint to show the true and correct names and
20 capacities of said fictitiously named defendants when the same have been
21 ascertained. These fictitiously named defendants shall be hereafter referred to
22 collectively with the named defendants as "Defendants."

23 13. Plaintiff is informed and believes, and thereon alleges, that
24 Defendants, and each of them, were the agents, employees, and representatives of
25 each other, taking the actions alleged herein, and that in so doing they were acting
26 within the scope of their respective authority and agency as such agents,
27 employees, and representatives, and are jointly and severally liable to Plaintiff.

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FACTUAL ALLEGATIONS

14. In or about 2017, AMG recommended and facilitated Plaintiff's investment in two separate Trust Deed Investments using PSG as the conduit for those investments.

15. The first Trust Deed Investment AMG recommended, and into which it placed Plaintiff, was secured by a property located at 224 Sea Cliff Drive, in San Francisco, California. Plaintiff remitted to Defendants the sum of \$200,000.

16. The second Trust Deed Investment AMG recommended, and into which it placed Plaintiff, was secured by a property located at 2234 Feather Rock Road, in Diamond Bar, California (the "Diamond Bar Investment"). Plaintiff caused to be remitted to Defendants the sum of \$235,000.

17. AMG also recommended a third investment, a real estate investment secured by a leasing business ("Leasing Investment"). AMG placed Plaintiff into that investment.

18. Defendants either knew or should have known that Plaintiff was not a "qualified investor" as that term is defined under California law. Plaintiff remitted to Defendants the sum of \$175,000.

19. Plaintiff did not know what a Trust Deed Investment was, and he is informed and believes, and thereon alleges, that Defendants knew that he did not know what a Trust Deed Investment was. Plaintiff was simply told by Defendants that he would "be the bank and (he would) get (his) money back with interest."

20. Defendants failed to provide Plaintiff with an Offering Circular or Private Placement Memorandum before placing him in the above referenced investments.

21. Defendants either knew or should have known that Plaintiff was not a qualified investor for these types of investments.

22. The property securing the Diamond Bar Investment Trust Deed was sold in March of 2023. Pursuant to the terms of the Trust Deed, the principal

1 amount of the investment plus any accrued interest should have been returned to
2 Plaintiff. Plaintiff made repeated attempts to telephone Fusco to ask when his
3 principal and interest would be returned.

4 23. When Fusco finally returned Plaintiff's call, he advised Plaintiff that
5 his money had been "mistakenly reinvested" into an investment he referred to as
6 "Greenfield." Plaintiff demanded that Fusco return the principal amount of the
7 investment plus any accrued interest. Fusco told Plaintiff yet again that his
8 principal and interest would be returned pursuant to the terms of the Trust Deed.
9 To date, despite repeated demands for repayment, the principal and interest from
10 the Diamond Bar Investment Trust Deed have still not been returned to Plaintiff.

11 24. Plaintiff also asked Defendants to return the principal amount he had
12 invested in the Leasing Investment along with accrued interest. Defendants have
13 refused to return the principal Plaintiff had invested in the Leasing Investment, or
14 any accrued interest on said investment. Defendants claimed that the monies
15 Plaintiff had invested in the Leasing Investment had been lost. Defendants
16 refused, and continue to refuse, to provide an accounting of where Plaintiff's
17 funds had been invested and what had happened to those funds. As a result of
18 Defendants' actions as set forth above, Plaintiff has suffered substantial financial
19 losses.

20 **FIRST CLAIM**

21 **Securities Fraud - Violation of California Corporations Code § 25401**

22 **(As Against All Defendants)**

23 25. Plaintiff incorporates and realleges all previous paragraphs, and each
24 and every part thereof, as though set forth at length herein.

25 26. Defendants offered and sold securities to Plaintiff by means of
26 written or oral communication that included an untrue statement of a material fact
27 or which omitted material facts necessary to make the statements truthful.

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1 statements made, in light of the circumstances under which they were made, not
2 misleading; or (c) engaged in acts, practices, or courses of business which
3 operated or would have operated as a fraud or deceit upon persons.

4 45. By engaging in the conduct described above, Defendants violated
5 and, unless restrained and enjoined, will continue to violate Section 17(a) of the
6 Securities Act, 15 U.S.C. § 77q(a).

7 46. As a direct and proximate result of Defendants' actions and
8 omissions and statutory violations, Plaintiff seeks all other forms of relief and
9 compensation available to him, all in amounts to be proven at the time of trial.

10 **FIFTH CLAIM**

11 **Conversion**

12 **(As Against All Defendants)**

13 47. Plaintiff incorporates and realleges all previous paragraphs, and each
14 and every part thereof, as though set forth at length herein.

15 48. As alleged herein above, Plaintiff was wrongfully induced to transfer
16 substantial monies to Defendants under circumstances tantamount to fraud and
17 breach of fiduciary duty. Plaintiff remitted at a minimum the sums of \$200,000,
18 \$235,000, and \$175,000, respectively, for the three "investments." Defendants
19 have been required to and/or requested to return all funds rightfully belonging to
20 Plaintiff, including his investments, promised interest, returns, and profits
21 generated thereby, however Defendants have failed and refused to restore
22 Plaintiff's funds. Plaintiff is informed and believes and thereon alleges that
23 Defendants have wrongfully converted Plaintiff's funds to their own personal use
24 and have thereby committed the tort of conversion.

25 49. As a direct and proximate result of Defendants' actions and
26 omissions, Plaintiff has suffered special, compensatory, incidental and
27 consequential damages all in amounts to be proven at the time of trial.

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1 50. As a direct and proximate result of Defendants' breaches, Plaintiff
2 has suffered general damages, including anxiety and mental distress, all in an
3 amount to be proven at the time of trial.

4 51. Pursuant to California Code of Civil Procedure Section 1021.5,
5 Plaintiff seeks to have his attorney's fees and costs borne by Defendants should he
6 prevail in this matter. Plaintiff seeks to vindicate substantial public policies which
7 stand to protect the public at large, including the right of consumers and investors
8 to be free from overreaching and fraud committed by persons standing in a
9 fiduciary capacity, and therefore Plaintiff hereby seeks the recovery of his
10 attorneys' fees and costs, including pursuant to the private attorney general theory
11 under this statute.

12 52. Defendants' conduct was and has been willful, deliberate, despicable,
13 and wanton, entitling Plaintiff to the recovery of punitive damages pursuant to
14 California Civil Code Section 3294 against each Defendant in amounts deemed
15 sufficient at trial to punish defendants, and each of them, and to make examples of
16 them thereby. Defendants intentionally acted to fraudulently induce Plaintiff to
17 invest substantial sums of money, and they have failed and refused to return his
18 money to him, knowing the financial and mental hardship to which they have
19 subjected him.

20 **SIXTH CLAIM**

21 **Unfair Business Practices**

22 **(As Against All Defendants)**

23 53. Plaintiff incorporates and realleges all previous paragraphs, and each
24 and every part thereof, as though set forth at length herein.

25 54. California law prohibits "unfair competition," which includes any
26 unlawful, unfair, or fraudulent business act or practice. Bus. & Prof. Code §
27 17200, *et seq.* The reach of this statute is sweeping, and its proscription of "any
28 unlawful, unfair or fraudulent" practice makes plain that "a practice may be

1 deemed unfair even if not specifically proscribed by some other law.” See *Cel-*
 2 *Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20
 3 Cal.4th 163, 180. Furthermore, California’s Unfair Competition Law (“UCL”) *prohibits any practices forbidden by law, be they civil or criminal, federal, state,*
 4 *or municipal, statutory, regulatory, or court made. South Bay Chevrolet v. General*
 5 *Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 880.

7 55. Defendants’ violations of state and federal securities statutes, their
 8 breaches of their fiduciary duties, and their conversion of Plaintiff’s funds
 9 constitute unfair business practices in violation of the UCL.

10 56. Plaintiff has suffered injury in fact and has lost money or property as
 11 a result of Defendants’ unfair business practices, and Defendants have reaped
 12 unfair benefits and illegal profits at Plaintiff’s expense.

13 57. Plaintiff is entitled to immediate possession of all amounts owed to
 14 him by Defendants, with interest.

15 58. Defendants’ unfair business practices entitle Plaintiff to seek
 16 preliminary and permanent injunctive relief, including but not limited to orders
 17 that Defendants account for and restore to Plaintiff the funds unlawfully withheld.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 20 A. For an Order enjoining Defendants, and those persons in active concert or
 21 participation with any of them, from violating Section 17(a) of the
 22 Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15
 23 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];
- 24 B. For an Order enjoining Defendants from directly or indirectly, including,
 25 but not limited to, through any entity owned or controlled by them,
 26 participating in the issuance, purchase, offer, or sale of any security,
 27 provided, however, that such injunction shall not prevent Fusco or Peck
 28 from purchasing or selling securities for their own personal accounts;

1 C. For an Ordering requiring Defendants to refund to Plaintiff all amounts
2 invested in the Trust Deed and Leasing Investments set forth above;

3 D. For compensatory, special, incidental and consequential damages according
4 to proof;

5 E. For general damages according to proof;

6 F. For punitive damages according to proof;

7 G. For pre-judgment and post-judgment interest as provided by law; and

8 H. For such other and further relief as the Court deems just and proper.

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10 Dated: November 12, 2024 DONALD R. HOLBEN & ASSOCIATES, APC

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12 By: 

Daniel M. DiRe, Esq.
Attorney for Plaintiff,
CHRISTOPHER WINN

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16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a trial by jury on all issues so triable.

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19 Dated: November 12, 2024 DONALD R. HOLBEN & ASSOCIATES, APC

20
21 By: 

Daniel M. DiRe, Esq.
Attorney for Plaintiff,
CHRISTOPHER WINN